

Appl. No. 10/608,357  
Amdt. D dated May 19, 2008  
Reply to O.A. of March 10, 2008

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Docket No. J-3866  
MAY 19 2008

#### Remarks/Arguments

As an initial matter, applicants thank the examiner for the courteous telephonic interview on Tuesday, April 29, 2008 with the undersigned. The discussion below summarizes and amplifies the matters discussed in the interview.

#### Status of Application:

Claims 1-38 and 40-48 are pending and at issue in the present application. Applicants traverse the rejections of claims 1-38 and 40-48 as obvious over Triplett, either alone or in combination with one or more of Demarest, Gillett, Lang, Ito, He, and Pedrotti.

#### Explanation of Amendments:

Support for the amendments to the claims is found at least on pages 5, lines 15-29 and page 8, lines 20-22. No new matter has been added. For the sake of clarity, the applicants have amended independent claims 1, 13, and 37 to recite ( $\text{m}^3/\text{m}^2$ )/s as the units of evaporation, from which the previously recited units, meters per second (m/s), were simplified.

Claim 1, as amended, recites an article of manufacture including a housing, a fan mounted to the housing to generate an air stream, and between about 10 ml and about 15 ml of a volatile liquid carried within an enclosed reservoir. The volatile liquid has an evaporation rate between about  $5.0 \times 10^{-9}$  to about  $10.0 \times 10^{-8}$  ( $\text{m}^3/\text{m}^2$ )/s measured with about 30% of the volatile liquid remaining at room temperature. The article further includes a wick extending between the volatile liquid and the air stream. About 90% of the volatile liquid is capable of evaporating through the wick between within one and two months under ambient conditions when the wick is exposed to the surrounding environment.

Claim 13, as amended, recites an article of manufacture including a housing, a porous wick associated with the housing, and a preselected volume of volatile liquid enclosed within a reservoir. The volatile liquid has an evaporation rate between about  $5.0 \times 10^{-9}$  to about  $10.0 \times 10^{-8}$  ( $\text{m}^3/\text{m}^2$ )/s measured with about 30% of the volatile liquid remaining at room temperature. The wick is in fluid communication with the volatile liquid and the surrounding environment, and at least 90% of the volatile liquid evaporates within 2 months under ambient conditions when the wick is exposed to the surrounding environment.

Claim 25 recites an article of manufacture in combination with a dispenser including a

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container comprising an aperture and a preselected amount of volatile liquid carried within the container. The volatile liquid has an evaporation rate between about  $5.0 \times 10^{-9}$  to about  $10.0 \times 10^{-8}$  meters per second measured with about 30% of the volatile liquid remaining at room temperature, as measured and calculated by drop shape analysis. The article further includes an ultra high molecular weight high density polyethylene wick disposed in the aperture so as to minimize spillage of the volatile liquid from within the container. The wick is in fluid communication with the volatile liquid and the surrounding environment. The container is insertable into the dispenser including a housing and a fan mounted to the housing to generate an air stream, and about 90% of the volatile liquid evaporates to the surrounding environment through the wick within two months under ambient conditions.

Claim 37, as amended, recites an article of manufacture in combination with a dispenser including a container and a volatile liquid carried by the container. The volatile liquid has an evaporation rate between about  $5.0 \times 10^{-9}$  to about  $10.0 \times 10^{-8}$  ( $\text{m}^3/\text{m}^2$ )/s measured with about 30% of the volatile liquid remaining at room temperature. The container is insertable into the dispenser including a housing and a porous wick associated with the housing. The volatile liquid has a relative evaporation rate between about 0.50 and about 4.0.

#### Specific Arguments Against Rejections

None of the applied references discloses or suggests an article of manufacture including a volatile liquid, wherein the volatile liquid evaporates at a rate of between about  $5.0 \times 10^{-9}$  to about  $10.0 \times 10^{-8}$  ( $\text{m}^3/\text{m}^2$ )/s measured with about 30% of the volatile liquid remaining at room temperature, as recited in claims 1-24, 37, 38, and 40-48.

Rather, the disclosure of Triplett focuses on a vapor dispensing device that varies the spatial relationship between a wick and a heater disposed thereon to minimize damage to the wick and effectively vaporize a vaporizable liquid by heating the wick. Specifically, Triplett discloses that a 1 cm length of wick spaced 1.5 cm from the top of a heater evaporates 9.73 grams of fragrance after 15 days of heating the wick to a temperature above room temperature (Table 2). Therefore, Triplett does not teach or suggest an article of manufacture including a volatile liquid, such that the volatile liquid evaporates at a rate of between about  $5.0 \times 10^{-9}$  to about  $10.0 \times 10^{-8}$  ( $\text{m}^3/\text{m}^2$ )/s measured with about 30% of the volatile liquid remaining at room temperature, as recited in claims 1-24, 37, 38, and 40-48.

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In the March 10<sup>th</sup>, 2008 Office action, the examiner's proposed calculation of dividing a 1 cm length of wick containing an initial amount of fragrance by 15 days measured in seconds (based on Triplett, Table 2) to render an evaporation rate in m/s omits measures of volume ( $m^3$ ) and surface area ( $m^2$ ), which are used to determine the change of volume per surface area over time, as fully described in the equation on page 5, lines 17-29 of the instant application. The examiner's calculation consists of a one-dimensional measure of length over time (m/s) and does not account for the change in volume ( $m^3$ ) per surface area ( $m^2$ ) over time (s), ( $m^3/m^2$ )/s.

Further, none of Demarest, Gillett, Lang, Ito, or He remedies the insufficiencies of Triplett. For at least these reasons, claims 1-24, 37, 38, and 40-48 are not obvious over Triplett, either alone or in combination with one or more of Demarest, Gillett, Lang, Ito, or He and the pending rejections thereover should be withdrawn.

Further, the rejection of claims 25-36 as obvious over various combinations including Pedrotti should be withdrawn because Pedrotti is not applicable prior art under 35 U.S.C. § 103(c). The subject matter of Pedrotti and the subject matter of the claims at issue were owned by or subject to an obligation of assignment to the same entity at the time the present invention was made. Further, Pedrotti could only qualify as prior art under § 102(e), if at all. Therefore, under § 103(c) Pedrotti may not be used to preclude patentability under § 103(a) of claims 25-36. For at least, this reason, the rejections of claims 25-36 should be withdrawn and a notice of allowability issued therefor.

#### Conclusion

For at least the reasons presented above, reconsideration and withdrawal of the pending rejections and issuance of a notice of allowance are respectfully requested.

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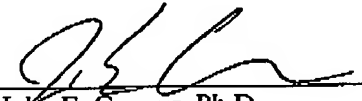
**Deposit Account Authorization**

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

McCracken & Frank LLP

May 19, 2008

By:   
John E. Conour, Ph.D.  
Reg. No. 59,054

311 S. Wacker  
Suite 2500  
Chicago, Illinois 60606  
Tel. (312) 263-4700  
Fax (312) 263-3990